SUPREME COURT, U. S.

OCT 10 1974

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-1462

MARK WHITE, ET AL,
Appellants

V.

DIANA REGESTER, ET AL,
Appellees

MARK WHITE, ET AL,
Appellants

V.

FRANK A. ESCALANTE, ET AL,
Appellees

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF APPELLEES ESCALANTE, ET AL

DON GLADDEN
MARVIN COLLINS
702 Burk Burnett Building
Fort Worth, Texas 76102

October 10, 1974

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NATURE OF THE CASE

Appellees Escalante, et al, black, brown, and economically disadvantaged residents of Texas House of Representa-

tives District 32 (Tarrant County) brought this action in June of 1973 challenging the constitutional sufficiency of Texas House of Representatives District 32 (Tarrant County), the largest multi-member house district (nine members) in the state of Texas. (Vol. I, p. i, App.).[1] After Escalante, et al filed suit in this cause, a number of other suits were filed in the same court attacking the constitutionality of other smaller multi-member districts

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[1]All record references in this brief are in the following forms:

"Vol. ___, p. ____, App." refers to the six amber volumes of the Printed Appendix.

"P.____, App. to Juris. Statement" refers to the blue Appendix to Jurisdictional Statement.

"Appellee Escalante X ___" refers to exhibits contained in the Original Record which are either not reproduced in the Printed Appendix, or are illegible. In the event of illegibility, parallel references are given. All Appellee Escalante Exhibits referred to herein were received in evidence at pp. 19, 22-24, 97, 98, 151, 802, 805, App. The depositions of witnesses Joyce Wendell Sifford, Betty Fischer, and Raymond Charles Johnson were offered and received into evidence on pp. 42, 106, and 34, App. respectively.

All record references in this brief to the testimony of expert witnesses include the name of the expert witness testifying. A summary of the qualifications of the four expert witnesses employed by Appellees Escalante, et al - Joyce Wendell Sifford, Betty Fischer, Raymond Charles Johnson, and Dr. Charles Cottrell - appears in Appendix A, infra at page 78. This is done for the convenience of the Court in order that the qualifications of any expert and the weight to be given to his testimony may be quickly ascertained.

throughout the state of Texas. (Vol. I, pp. i-v, App.). All of these suits were consolidated for trial before a single three-judge federal court. (Vol. I, p. iii, App.). That Court held seven of these multi-member districts, including District 32 (Tarrant County), to be unconstitutional. After affording all persons interested, including parties to the litigation, ample time to submit proposed plans, the Court adopted plans for single-member districts in each of the seven districts. (Vol. I, p. xviii, App.).

QUESTIONS PRESENTED

1. WHETHER BLACKS OF TEXAS HOUSE OF REPRESENTATIVES DISTRICT 32 (TARRANT COUNTY) HAVE BEEN DENIED EFFECTIVE PARTICIPATION IN THE ELECTION PROCESS FOR SUCH HOUSE OF REPRESENTATIVES BY VIRTUE OF DISTRICT 32 (TARRANT COUNTY) BEING A NINE-MEMBER MULTI-MEMBER DISTRICT?

2. WHETHER BROWNS OF TEXAS HOUSE OF REPRESENTATIVES DISTRICT 32 (TARRANT COUNTY) HAVE BEEN DENIED EFFECTIVE PARTICIPATION IN THE ELECTION PROCESS FOR SUCH HOUSE OF REPRESENTATIVES BY VIRTUE OF DISTRICT 32 (TARRANT COUNTY) BEING A NINE-MEMBER MULTI-MEMBER DISTRICT?

3. WHETHER ECONOMICALLY DISADVANTAGED PERSONS OF TEXAS HOUSE OF REPRESENTATIVES DISTRICT 32 (TARRANT COUNTY) HAVE BEEN DENIED EFFECTIVE PARTICIPATION IN THE ELECTION PROCESS FOR SUCH HOUSE OF REPRESENTATIVES BY VIRTUE OF DISTRICT 32 (TARRANT COUNTY) BEING A NINE-MEMBER MULTI-MEMBER DISTRICT?

4. WHETHER THE COURT BELOW PROPERLY ADOPTED AN APPROPRIATE SINGLE MEMBER DISTRICT PLAN FOR DISTRICT 32 (TARRANT COUNTY) OF THE TEXAS HOUSE OF REPRESENTATIVES?

STATEMENT OF THE CASE

6/18/73 - Appellees Escalante, et al filed original complaint in CA-73-CA-115 and intervention in Graves v. Barnes, A-71-CA-142 (aff'd in part, rev'd in part, sub nom White v. Regester, 412 US 755 (1973) in the United States District Court for the Western District of Texas. (Vol. I, p. i, App.).

8/7/73 through 8/10/73 - Various other complaints and interventions filed by parties attacking constitutionality of other smaller mutli-member districts in Texas. (Vol. I, pp. i-v, App.).

9/28/73 - All cases were consolidated for trial and with the recusal of Judge Roberts, a single three-judge court effectively designated to hear all cases. (Vol. I, p. iii, App.).

10/4/73 - Managing Judge Justice set trial date for December 3, 1973, at Austin, Texas. (Vol. I, p. iii, App.).

11/6/73 - Appellees Escalante, et al exhibited proposed single-member district plan for District 32 (Tarrant County) to Appellants in office of Appellees' counsel.

12/3/73 through 12/5/73 - Trial on the merits. (Vol. I, pp. vii-ix, App.).

12/3/73 - Appellees Escalante, et al proposed single-member district plan for District 32 (Tarrant County) offered and received into evidence. (Appellee

Escalante X 1f, Original Record; Vol. I, pp. 97, 98, App.).

12/5/73 - Judge Goldberg sets December 21, 1973, as date for submission of post trial briefs. (Vol. II, p. 775, App.).

12/21/73 - Order entered extending time to submit post trial briefs to December 28, 1973. (Vol. I, p. ix. App.).

1/7/74 - Three-judge court sets January 12, 1974, as deadline for Appellees to submit proposed redistricting plans for Court's consideration. (Vol. I, p. x, App.).

1/7/74 - Three-judge court sets January 18, 1974, as deadline for Appellants to submit proposed redistricting plans for Court's consideration. (Vol. I, p. x, App.).

1/11/74 - Appellees Escalante, et al file proposed single-member redistricting plan for Court's consideration. (Vol. I, p. xi, App.).

1/21/74 - Counsel for all parties notified telephonically (followed by letter) that seven of the multi-member districts including District 32 (Tarrant County) were held unconstitutional and setting a hearing for the implementation of single-member districts plans in those districts for January 28, 1974.

1/28/74 - Hearing on implementation of single-member district plans before three-judge court. Appellee Escalante plan for

single-member districts for District 32 (Tarrant County) which had been in evidence since December 3, 1973, and filed as the proposed plan for District 32 (Tarrant County) by Escalante, et al on January 11, 1974, was adopted by the Court pursuant to its memorandum order and opinion holding District 32 (Tarrant County) unconstitutional. The plan urged for District 32 (Tarrant County) by Appellant was filed on the morning of January 28, 1974, a few minutes before trial. (Vol. II, pp. 796, 797, App.).

1/31/74 - Notice of Appeal by Appellants.

1/31/74 - Application for Stay of three-judge court order by Appellants. Appellants' application for stay left the extremely prejudicial and erroneous impression that the three-judge court very hastily and without due deliberation adopted single-member district plans for the seven districts held unconstitutional. The application for stay implies, but does not state, that the Appellants were first notified of the Court's ruling holding the multi-member districts unconstitutional on January 21, 1974, and that the hearing itself was on January 28, 1974, with only five hours of testimony and five minutes of deliberation being given on various plans from each of the seven districts. In truth and in fact, the three-judge court below notified all parties on January 7, 1974, that all proposed plans for single-member districts were due no later than January 18, 1974. Appellants failed to submit their plan until the morning of the hearing. The

three-judge court thus provided itself with ten days from the date the last plan was due in which to consider and deliberate upon adoption of various plans. Most plans were timely submitted. The plan of Appellees Escalante, et al was supported by numerous statistical studies and exhibits all of which had been in evidence since the close of the main trial December 5, 1973. The same erroneous impression is left by Appellant's statement of the case on page 8 of Appellants' brief in which it is again suggested that Appellants were given very short notice and that the plans actually adopted were ill-considered. The facts concerning this are discussed infra under point IV. (Vol. III, p. 949, App.).

1/29/74 - Opinion and Order of the three-judge court filed.

2/5/74 - Dissenting opinion of Judge Wood filed.

ARGUMENT

I. BLACKS AND BROWNS IN DISTRICT 32 (TARRANT COUNTY) ARE EFFECTIVELY DENIED REPRESENTATION IN THE TEXAS HOUSE OF REPRESENTATIVES BY THE EXISTENCE OF A NINE-MEMBER MULTI-MEMBER DISTRICT.

A. Relevant Statistical And Sociological Data

District 32 (Tarrant County) has nine State Representatives who run at large in the district. It is situated wholly within Tarrant County, Texas. There are 161 census tracts in Tarrant County, 13 and a fraction of which are situated in District 42, which is comprised of Parker County, Texas, and these 13 and a fraction tracts. District 32 is composed of the remaining 147 and a fraction census tracts, which is made up of the following ethnic and economic constituency:

Total Population	675,368
Total White	553,867 (82%)
Total Black	80,336 (12%)
Total Brown	40,742 (6%)
Mean Family Income	$11,296.00
Mean Family Size	3.8

(Appellee Escalante Xs 1a', 2a, 2b, Vol. VI, p. 2574, App.).

It is the largest remaining multi-member legislative district in the State of Texas.

The population of District 32 (Tarrant County) can be roughly divided geographically into four quadrants. While this division is not exact either geographically or numerically, the purpose of so dividing District 32 (Tarrant County) is to demonstrate major district-wide differences in the ethnic and economic make-up of the population.

Northwest Quadrant

Total Population	171,241
Total White	140,623 (82%)
Total Black	11,967 (7%)
Total Brown	18,651 (11%)
Mean Family Income	$ 9,317.00
Mean Family Size	3.88

Two State Representatives resided in this quadrant at the time of their election in 1972. One of these, however, resided in the extreme portion of the quadrant, which area more closely identifies with the Northeast Quadrant as a community of interest.

Northeast Quadrant

Total Population	178,067
Total White	170,002 (95%)
Total Black	2,776 (2%)
Total Brown	5,250 (3%)
Mean Family Income	$12,605.00
Mean Family Size	3.77

Four State Representatives resided in this quadrant at the time of their election in 1972.

Southeast Quadrant

Total Population	153,811	
Total White	93,430	(61%)
Total Black	55,161	(36%)
Total Brown	5,220	(3%)
Mean Family Income	$ 9,093.00	
Mean Family Size	3.98	

No State Representatives resided in this quadrant at the time of the election in 1972.

Most of the predominantly white city of Arlington is situated in this quadrant. Its ethnic and economic make-up is significantly different than those in the quadrant living outside the city of Arlington. It is isolated by distance from Urban Fort Worth where most blacks live. The following statistics are therefore supplied relating to those persons residing in the Southeast Quadrant, the city of Arlington excluded:

Total Population	109,658	
Total White	51,378	(47%)
Total Black	54,189	(49%)
Total Brown	4,006	(4%)
Mean Family Income	$ 8,815.00	
Mean Family Size	4.04	

(No State Representatives resided in this quadrant.)

Southwest Quadrant

Total Population	172,420

Total White	150,749 (87%)
Total Black	10,409 (6%)
Total Brown	11,324 (7%)
Mean Family Income	$13,374.00
Mean Family Size	3.74

Three State Representatives resided in this quadrant at the time of their election in 1972. (Appellee Escalante X 1b', Vol. VI, pp. 2575-2577, App.; Appellee Escalante Xs 3a-i, Vol. VI, pp. 2383-2385 App.).

Variations in income and mean family size are great in many census tracts, with the richest ($40,693) and smallest mean family size being almost 100% white, and the poorest ($3,604) and largest mean family size (4.56) being almost 100% black. (Appellee Escalante X 1e', Vol. VI, pp. 2580-2582, App.; Appellee Escalante 2a, 2b.)[2]

There is a total black population in District 32 (Tarrant County) of 80,336, which is 12% of the total population. There are 25 census tracts which contain more than 30% black population. There are only 15 census tracts in District 32 (Tarrant County) wherein blacks comprise more than 5% and less than 30% population and, with three exceptions all of these tracts are contiguous with those having more than 30%.

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[2]Economic divergences are fully discussed under III and IV below, infra pp. 62 et seq. and 64 et seq.

Thirteen of the above census tracts in District 32 (Tarrant County) have in excess of 75% black population. The mean family income of these thirteen tracts is $6,570, and their mean family size is 4.04. (Appellee Escalante X 1c', Vol. VI, p. 2578, App.; Appellee Escalante Xs 2a, 2b.).

Thus, blacks are largely concentrated in identifiable census tracts, most of which census tracts are contiguous. (Appellee Escalante X 1c', Vol. VI, p. 2578, App.).

There are 40,742 persons, 6% of the total population, of Spanish language or Spanish surnames in District 32 (Tarrant County). There are 7 census tracts with greater than 30% brown population. These are the only tracts with significant geographic concentration of brown people.

55 census tracts have more than 5% and less than 30% brown population.

50 census tracts have more than 2% and less than 5% brown population.

The 105 census tracts with more than 2% and less than 30% are spread throughout District 32 (Tarrant County). (Appellee Escalante X 1d', Vol. VI, p. 2579, App.; Appellee Escalante Xs 2a, 2b.).

Thus, browns are somewhat concentrated in identifiable census tracts, but to a considerably smaller extent than blacks. (Appellee Escalante X 1d', Vol. VI, p. 2579, App.).

B. Blacks and Browns In District 32 (Tarrant County) Are Effectively Denied Access To The Process Of Electing Candidates To The Texas House of Representatives.

1. Blacks And Browns Do Not Have Effective Access To The Process Of Slating Candidates.

In so far as the Texas House of Representatives is concerned, nomination in the Democratic primary in District 32 (Tarrant County) is tantamount to election. (Vol. III, p. 1089, App. - J. W. Sifford).[3] No Republican has ever been elected to the House of Representatives from District 32 or Tarrant County. (Vol. III, p. 1149, App. - Betty Fischer; Vol. III, p. 1226, App. - R. C. Johnson; Vol. I, p. 216, App.; Appellee Escalante X 5, Vol. VI, p. 2397, App.). Therefore, all references to elections and races for the House of Representatives in District 32 (Tarrant County) hereafter will be to the Democratic Primary unless otherwise stated.

There are two important slate-making groups for legislative races in Tarrant County: business (or "Seventh Street") and labor. (Vol. III, p. 1035, App. - J. W. Sifford; Vol. I, p. 45, App. - J. W. Sifford). These two groups normally slate candidates prior to the Democratic Primary.

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[3] See Appendix A, infra at p. 78 for a summary of expert witnesses qualifications for Joyce Wendell Sifford, Betty Fischer, R. C. Johnson, and Dr. Charles Cottrell.

(Vol. I, p. 48, App. - J. W. Sifford).

Other special interests groups (car dealers, M.D.'s, dentists, etc.) usually align themselves with one of the two principal slate-making groups. (Vol. III, pp. 1034, 1035, App. - J. W. Sifford).

a. Existence of "Business" Slating Group

The Seventh Street group is not an organized group of persons but rather a loose amalgamation of business leaders who meet from time to time, discuss candidates, and endorse and finance campaigns. (Vol. I, pp. 144, 145, App. - Betty Fischer).

Representative "Gib" Lewis testified that the Seventh Street slating group was "a mythical group". (Vol. I, p. 183, App.) From this testimony, it has been argued that no such group exists. But Representative Lewis went on to testify that labor is often at odds with 'the business group" in the sense that they are not both supporting the same candidates. (Vol. I, pp. 185, 186, App.). Thus the witness freely acknowledged the existence of a "business group" of slate-makers. There is in fact ample evidence of the existence of the Seventh Street slate-makers.

The term "Seventh Street" (business group) is derived from the street in Fort Worth where most of the big business executive offices are maintained. (Vol. III, p. 1085, App. - J. W. Sifford). Tarrant County political expert J. W. Sifford testified that Seventh Street does

have a slating process. (Vol. III, p. 1086, App. - J. W. Sifford). He further testified that it was well known in Tarrant County who the Seventh Street group would support even though it had no official organization. (Vol. III, pp. 1032, 1033, App. - J. W. Sifford). He testified that this group functioned well, that they kept a tight rein on their people, and that their activities in the business community were similar to the slate-making activities of labor. (Vol. I I, pp. 1032, 1033, App. - J. W. Sifford). Tarrant County political expert Betty Fischer testified that there were two slate-making groups in Tarrant County: labor-liberal-black-brown coalition and "Seventh Street" (business group). (Vol. I, p. 133, App. - Betty Fischer). "You know who they are [candidates for each of these two groups] within two weeks after filing deadline." (Vol. I, pp. 133, 134, App. - Betty Fischer). Moreover, Mrs. Fischer testified that candidates slated by the business group win more than 50% of the time. (Vol. I, p. 142, App. - Betty Fischer). Furthermore, the existence of the Seventh Street group has been well known for some time. In 1962, Tarrant County political expert J. W. Sifford testified that the labor and business groups met and each agreed not to slate candidates that year for the Democratic Primary. (Vol. III, p. 1031, App. - J. W. Sifford). Some of the persons present at that meeting included the Tarrant County Democratic Chairman who was later Assistant to Texas Governor John Connally, a prominant insurance leader who later became Commissioner of Insurance under under John Connally, and the head of Morris Plan Insurance who later became

Highway Commissioner and then Welfare Commissioner. (Vol. III, p. 1031, App. - J. W. Sifford).

In 1962, Seventh Street slate-makers and labor slate-makers reached a "hands off agreement" before the primary whereby neither would support a slate of candidates. (Vol. III, p. 1031, App. - J. W. Sifford). In effect, each group conceded certain races to the other. Thus as early as 1962, the Seventh Street (business group) slate-makers were at least as powerful as the labor-liberal-black-brown coalition

Tarrant County political expert J. W. Sifford testified that newspaper stories set forth the names of candidates supported by the Seventh Street slate-makers. (Vol. III, p. 1111, App. - J. W. Sifford). Tarrant County political expert Betty Fischer testified that rival slates of candidates appear in the newspapers in Fort Worth in the closing days of the primary races for state legislature, and that thus even though the Seventh Street group does not make extensive use of handbill cards, the slates are well-known before the primary. (Vol. I, pp. 143, 147, App. - Betty Fischer).

Seventh Street supports its slate of candidates quite well financially. (Vol. I, p. 144, App. - Betty Fischer).

Thus it is well documented in this record that there is a Seventh Street business slate-making group in Tarrant County. The trial court certainly did not abuse its discretion in finding from this

ample evidence that such a business group in fact exists.

b. Existence of Labor-Liberal-Black-Brown Slating Coalition

The labor slate-making consists of a number of organized groups including labor, liberal, black and brown. (Vol. III, pp. 1217, 1218, App. - R. C. Johnson). While in the past these groups have functioned more or less severally, in 1972, for the first time, five labor-liberal groups conducted a joint screening process of prospective candidates. (Vol. III, pp. 1217, 1218, App. - R. C. Johnson). These organizations were the Precinct Workers Council (black), PASO (brown), United Auto Workers local, Teamsters local, and the Tarrant County Central Labor Council (labor). (Vol. III, pp. 1216, 1218, App. - R. C. Johnson). Active candidate recruitment has been a part of labor slate-making since 1952 in Tarrant County. (Vol. III, p. 1037, App. - J. W. Sifford). Tarrant County political expert J. W. Sifford testified that he has participated in candidate recruitment as a part of the labor slating process since he was elected to the Tarrant County Central Labor Council in 1956 and participates in such recruitment at the present time. (Vol. III, pp. 1037, 1038, App. - J. W. Sifford).

Examples of slate cards used by the labor slate-makers for the years 1966 through 1972 are found in Appellee Escalante Exhibits 18a through 18i (Vol. VI, pp. 2557-2560, App.) See also Appellee Escalante Exhibit 22.

c. Dominance of Slate-Making in Tarrant County Politics

Organized slate-making has generally dominated the results of legislative elections in Tarrant County.[4]

Being slated as a candidate by either the Seventh Street group or the labor group is not in itself a sufficient condition to being elected, but it is highly improbable that a candidate can be elected without being so slated. (Vol. I, pp. 48, 49, 76, App. - Betty Fischer). Tarrant County political expert J. W. Sifford testified on deposition that generally legislative candidates just cannot get elected without identifiable business support or identifiable labor support. (Vol. III, p. 1108, App. - J. W. Sifford). There is testimony in the record that being slated by one of the two groups in Tarrant County is not always necessary for a candidate to win, the only example of which any witness was able to recall was the senate race of Senator Betty Andujar. (Vol. I, p. 150, App. - Betty Fischer). However, Mrs. Andujar ran in a senatorial district that encompasses only about one-half of house District 32 (Tarrant County). (Vol. I, pp. 206, 207, App.). Moreover, she ran as a Republican and thus the slate-making process which usually takes place in the primary was not a factor. Her opponent

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[4]This was the expert opinion of Betty Fischer testifying from her knowledge as an active participant in Tarrant County politics since 1957. (Vol. I, p. 133, App. - Betty Fischer).

at that time was not an incumbent in the senate. (Vol. I, pp. 216, 217, App.). Also, she had had previous name exposure by reason of being the wife of a prominent pathologist in Fort Worth and by reason of having run for state representative two years before. (Vol. I, p. 215, App.). Moreover, no witness was able to recall any named person ever elected to the State House of Representatives without the support of either labor or Seventh Street. (See Vol. I, pp. 207, 208, App.).

d. Exclusion of Blacks and Browns from Slate-Making Process

i. Exclusion from ranks of slated candidates

Until 1968, there were no black candidates for the legislature from Tarrant County or District 32. (Vol. III, p. 1036, App. - J. W. Sifford). Since 1968, there have been three black candidates for the legislature: Charles Grays in 1968, Bobby Webber in 1972, and Jim Gaskin in 1972. (Vol. III, pp. 1039, 1059, App. - J. W. Sifford). Of these Webber and Grays were slated by the labor slate-makers. (Vol. III, pp. 1041, 1042, 1059, App. - J. W. Sifford). Mr. Gaskin did not have the endorsement of the labor-liberal black-brown coalition. (Vol. III, pp. 1032, 1033, App. - J. W. Sifford). He lost heavily, losing even in many black boxes. (Vol. III, pp. 1058, 1082, 1083, App. - J. W. Sifford). Neither of the other two candidates won. Tarrant County political expert Betty Fischer testified that when it comes to voting for a black the labor

slate-makers simply cannot keep their voters hitched. Even with labor endorsement, many of labor's followers will not vote for a black. (Vol. I, p. 141, App. - Betty Fischer).

The two blacks (Webber and Grays) who have been slated by the labor group in the past are exceptions to the general rule that the labor slate-makers will not slate blacks. When labor has endorsed black candidates, these candidates have been invited into the council chambers of the slate-makers only after filing deadline, while white candidates are encouraged before filing deadline. (Vol. I, p. 143, App. - Betty Fischer).

Webber was not recruited by the labor group, they did not expect him to win, and he got considerably less support in terms of money and effort from the labor group than did their other slated candidates. (Vol. III, pp. 1032, 1033, 1060-1062, App. - J. W. Sifford). Webber lost. (Vol. I, p. 168, App. - Betty Fischer). Tarrant County political expert J. W. Sifford testified that Charles Grays was slated by labor in 1968 with full knowledge that he could not win. Grays was told of this. He testified that this was a deviation from the slate-makers usual procedure of selecting a candidate on the basis of his ability to win. (Vol. III, p. 1042, App. - J. W. Sifford). However, he stated that the incumbent Bud Sherman needed an opponent, and that the presence of a black on the slate would attract black voters for other white slated candidates. (Vol. III, pp. 1041-1043, App. - J. W. Sifford).

Mr. Grays lost the primary, getting a block black vote and a small percentage of white votes. (Vol. III, p. 1045, App. - J. W. Sifford). The slate-makers gave less money and help to Grays than to other candidates because they knew he could not win. (Vol. III, p. 1098, App. - J. W. Sifford). While there was testimony of the existence of a black slate-making group (the Precinct Workers Council), it is undisputed that they represent much too small a part of the community to ever be able to persuade a candidate to run for the legislature on the sole promise of their support. (Vol. III, pp. 1211, 1212, 1240, App. - R. C. Johnson). The Precinct Workers Council usually aligns itself with labor. (Vol. III, pp. 1212, 1213, App. - R. C. Johnson).

It is undisputed that Seventh Street slate-makers do not attempt to accomodate their slate to the general ethnic groups of Tarrant County, nor to their legislative requirements, and that group has never supported blacks or browns for the legislature.[5] (Vol. III, p. 1087, App. - J.W. Sifford; Vol. I, p. 134, App. -

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[5]The Seventh Street group has supported a black for the Fort Worth City Council but Fort Worth has a much higher percentage of blacks than does the District 32 (Tarrant County), since there are many 100% white suburbs in District 32 (Tarrant County). (Vol. I, p. 146, App. - Betty Fischer). This points up the fact that the slate-makers will continue to ignore blacks in races where they do not constitute a substantial precentage of the electorate.

Betty Fischer).

Tarrant County black political expert R. C. Johnson testified that the Seventh Street slate-makers have never consulted him, the Tarrant County Precinct Workers Council, or any other black precinct chairman about their views on polit cal issues. (Vol. III, pp. 1231-1234, App. - R. C. Johnson).

Tarrant County Democratic leader and slate-maker J. W. Sifford testified that he has personally discouraged young, politically active labor leaders who are black from running for the legislature because they simply could not win in a multi-member district. He has discouraged among others Richard Linton, a young, energetic and potentially attractive black candidate for this reason. (Vol. III, p. 1063, App. - J. W. Sifford). In 1970, he discouraged Albert Mitchell, a young politically active labor leader who was black and told him that he simply could not win. (Vol. III, pp. 1045, 1046, App. - J. W. Sifford). Mr. Mitchell did not run for office. (Vol. III, p. 1047, App. - J. W. Sifford). He further testified that Albert Mitchell also was discouraged by black Tarrant County political expert R. C. Johnson on the basis that Mr. Mitchell could not win. (Vol. III, pp. 1219, 1220, App. - R. C. Johnson). Mr. Sifford further testified that in 1972, he discouraged R. C. Johnson himself, the black head of the Precinct Workers Council, who was an attractive and politically active member of organized labor because "a black just can't win district-wide".

(Vol. III, pp. 1049, 1050, App. - J. W. Sifford). R. C. Johnson testified that he was discouraged from running by a number of labor-liberal leaders because a black just could not win district-wide. (Vol. III, pp. 1220-1223, App. - R. C. Johnson).

Tarrant County political expert J. W. Sifford denied that exclusion of blacks from the labor-liberal slate has been motivated in the past by racism on the part of individuals in the slating group, but rather primarily because their chances of winning are poor. (Vol. III, pp. 1105, 1106, App. - J. W. Sifford). Mr. Sifford testified that he would like to see blacks in the legislature from Tarrant County (Vol. III, p. 1081, App. - J. W. Sifford), but he further testified that he advises blacks not to run for state representative based on his opinion that a black simply cannot win district-wide. (Vol. III, p. 1081, App. - J. W. Sifford).

ii. Exclusion from ranks of slate-makers

Not only have blacks been discouraged from running, and exploited as candidates by the slate-makers, but they have been excluded from the ranks of the more powerful slate-makers.

Tarrant County black political expert R. C. Johnson testified that no black from UAW local 276 (3500 members, 25% of whom are black) has ever been a delegate to the Tarrant County Central Labor Council (the primary slating group) during the time the UAW was affiliated with such

council. Since the UAW withdrawal from the Tarrant County Central Labor Council, no blacks have ever been delegates to the Community Action Program which is now the political arm of the UAW. (Vol. III, pp. 1214, 1215, App. - R. C. Johnson).

Political expert Dr. Charles Cotrell testified that besides the legacy of racism in the state of Texas and Tarrant County, that the denial of access to the slating process further renders multi-member districts in Tarrant County unconstitutionally discriminatory. (Vol. II, pp. 653, 654, App. - Dr. Charles Cotrell). It is thus obvious that blacks are almost totally excluded from the slating process in District 32 (Tarrant County), the only exceptions being rather token support given to black candidates whom it is hoped will attract black voters for other white candidates.

2. Past And Present Racial Discrimination Preclude Effective Participation Of Blacks And Browns In The Electoral Process

a. Racial Discrimination Generally

There is a history of racial problems in Tarrant County. In the 1950's these problems were most prominent in housing situations where blacks moved into white neighborhoods and in situations where blacks attempted to use previously all white swimming pools. (Vol. III, pp. 1223, 1224, App. - R. C. Johnson). Most recently the racial problems in Tarrant County have been manifest in the problems

of school integration and busing. (Vol. III, p. 1224, App. - R. C. Johnson).

That there is currently racial polarization in Tarrant County is so well known that proof of such is uncontroverted by Appellant. Racial attitudes are well demonstrated by the current newspaper clippings from major Tarrant County newspapers contained in Appellee Escalante Exhibits 16, 17, and 21. (Vol. VI, pp. 2487-2556, 2563-2570, App.). Tarrant County political expert J. W. Sifford testified that there is racial prejudice in Tarrant County today and that such prejudice tends to be effectively transmitted politically. (Vol. I, p. 44, App. - J. W. Sifford). A recent example of the use and effectiveness of appeals to race prejudice is a 1970 state Senate campaign for District 10, Tarrant County.[6] The incumbent Senator Don Kennard trailed his opponent Joe Shannon in many all white precincts in the first primary. (Vol. I, pp. 40, 41, App. - J. W. Sifford). However, immediately before the second primary, Senator Kennard mailed out the leaflet contained in Appellee Escalante Exhibit 20 to the white precincts. (Vol. I, p. 41, App. - J. W. Sifford). That leaflet exhibits a picture of praying children with the caption "Do you want them sent across town by force busing? Joe Shannon does!" Senator Kennard carried the white precincts in the second

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[6] State senatorial District 10 comprised at that time the largest part of the present House of Representatives District 32 in Tarrant County.

primary which he had lost in the first primary, and was re-elected. (Vol. I, pp. 40, 41, App. - J. W. Sifford; Appellee Escalante X 20, Vol. VI, p. 2562, App.).

b. Racial Discrimination As It Affects Minority Voting

In the primaries and general elections for the State House of Representatives in District 32 (Tarrant County) there is a much lower voter turnout in black precincts than in white precincts (Vol. III, p. 1167, App. - Betty Fischer; Appellee Escalante X 9, Vol. VI, p. 2422, App.); and based upon comparative black and white precincts there is a 13% greater turnout of white persons than blacks among registered voters in the Democratic Primaries in District 32. (Appellee Escalante X [8,9]', Vol. VI, pp. 2587-2590, App.). It is well established by the evidence that the voters in the black precincts feel that a black simply cannot be elected to the legislature in District 32 (Tarrant County) under the multi-member system. (Vol. III, pp. 1230, 1231, App. - R. C. Johnson). Tarrant County political expert Betty Fischer testified, based upon her physically walking through black precincts during campaigns and getting direct voter reactions, that many blacks simply feel that there is no use in voting in legislative races since they do not have an effective vote. (Vol. III, p. 1195, App. - Betty Fischer).

According to Tarrant County political expert R. C. Johnson, this low voter turnout in legislative races in black

precincts is caused by the feeling of the blacks that their vote does not count. (Vol. III, p. 1249, App. - R. C. Johnson).

Political expert Dr. Charles Cotrell confirmed that the hopeless attitude of these blacks is well founded. He testified that multi-member districts in most cases tend to submerge, cancel, or otherwise minimize the participation and effectiveness of minority voting strength. (Vol. II, p. 557, App. - Dr. Charles Cotrell).

The following tables show the total registrations and the participation of blacks and whites in five black and five white precincts in the primaries and general elections for 1968, 1970, and 1972.[7]

Voter Participation in Primary and General Elections in 1968

	Total Reg. Voters	Total Vote Cast	% Participation
Black:			
Primary	8,543	2,753	32
General	8,543	6,547	77
White:			
Primary	13,706	5,673	41
General	13,706	10,527	77

[7]Five black voting precincts (50, 59, 89, 106 and 120) and five white voting precincts (63, 77, 81, 118 and 146) were used in these comparisons.

Voter Participation in Primary and General Elections in 1970

	Total Reg. Voters	Total Vote Cast	% Participation
Black:			
Primary	9,412	2,668	28
General	9,412	4,079	43
White:			
Primary	9,551	3,634	38
General	9,551	5,652	59

Voter Participation in Primary and General Elections in 1972[8]

	Total Reg. Voters	Total Vote Cast	% Participation
Black:			
Primary	9,140	3,691	40
General	11,458	6,032	53
White:			
Primary	9,878	5,049	51
General	11,880	8,401	70

(Appellee Escalante X [8,9]', Vol. VI, pp. 2587-2590, App.).

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[8] Due in part to the requirement of payment of a poll tax as a prerequisite to voting through the year 1966, registration in low income and black precincts has traditionally been significantly lower than in higher income and white precincts.

Although recently registration has significantly increased in black and low income precincts, voter

Tarrant County political expert R. C. Johnson testified that voter turnout would increase in black precincts in a race involving two black candidates running in a single-member, predominately black district. (Vol. III, p. 1254, App. - R. C. Johnson).

In District 32 (Tarrant County), only seven census tracts have 30% or greater brown population. (Vol. III, p. 1171, App. - Betty Fischer). Tarrant County political expert Betty Fischer testified that based on her experience, brown voter turnout is about like that of blacks, that is, low. (Vol. I, p. 108, App. - Betty Fischer). This turnout is low because the browns feel that their vote is not going to make any difference. (Vol. I, p. 108, App. - Betty Fischer). Representative B. T. Reyes from Houston testified that the Mexican-American community does not have access to the political machinery operative in the legislative field in Texas. (Vol. I, pp. 287, 288, 307, App.).

c. Voter Polarization By Race

There are only three examples of House races to use as a basis for determination of polarization of voting by ethnic make-up, since there have only been three instances in the modern history of the Democratic Party where black candidates sought the Democratic nomination for State Representative against white opponents.

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participation (particularly in primaries) has been significantly less in black precincts as compared to white precincts.

There were 17 precincts in 1968 and 19 precincts in 1972 composed of virtually one hundred percent black population.[9] Votes in these 17 and 19 precincts respectively are compared in the following table to show the number and percent that each of the black candidates received and percent of vote received by their white opponents (whether one or more) in those precincts. This is compared with their vote and percent of vote in the remaining predominantly white precincts. (Appellee Escalante Xs 7a'-7c', Vol. VI, pp. 2585, 2586; Appellee Escalante Xs 7a-7c, Vol. VI, pp. 2407-2411, App.).

1968 Democratic Primary
State Representative, Place 3
(Tarrant County)

Black Precincts:

Charles Grays (Black)	- 4,290	(89%)
W. C. (Bud) Sherman (White)	- 540	(11%)

Predominatly White Precincts:

Charles Grays (Black)	-18,094	(27%)
W. C. (Bud) Sherman (White)	-47,788	(73%)

1972 Democratic Primary
State Representative, Place 5
(District 32)

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[9] 1968 Black Precincts Nos. 1, 5, 10, 50, 56, 58, 59, 61, 73, 78, 79, 89, 90, 106, 119, 120, 127. 1972 Black Precincts included those just listed, plus Nos. 80 and 154.

Black Precincts:

Bobby Webber (Black)	- 6,732	(77%)
Combined Total of Three White Opponents	- 1,999	(23%)

Predominantly White Precincts:

Bobby Webber (Black)	- 21,502	(25%)
Combined Total of Three White Opponents	- 65,706	(75%)

1972 Democratic Primary
State Representative, Place 9
(District 32)

Black Precincts:

James Gaskin (Black)[10]	- 2,673	(32%)
Combined Total of Two White Opponents	- 5,679	(68%)

Predominantly White Precincts:

James Gaskin (Black)	- 15,841	(20%)
Combined Total of Two White Opponents	- 65,368	(80%)

It is clear that there is currently much voter polarization by race in District 32 (Tarrant County).

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[10]It should be noted that James Gaskin did not have the support of the Tarrant County Precinct Workers Council (a black political organization), nor was he supported by the traditional Black-Labor-Liberal slate-makers as were Grays and Webber.

3. Neither Blacks Nor Browns In District 32 (Tarrant County) Can Presently Be Elected To The House Of Representatives In A Nine-Member Multi-Member District.

Tarrant County political expert J. W. Sifford testified that a black candidate cannot presently obtain the Democratic nomination for state representative in District 32 (Tarrant County). (Vol. III, pp. 1079, 1080, App. - J. W. Sifford). Based upon this opinion he advises blacks not to run. Although white candidates today welcome black support (whereas formerly they did not), whites are unwilling to support a black candidate. (Vol. III, p. 1082, App. - J. W. Sifford). Recent white blacklash against blacks because of busing and other issues ("The George Wallace factor") causes the defection of many poor white workers from the coalition of labor, blacks, browns, and white liberals when it comes to voting for blacks. (Vol. III, p. 1096, App. - J. W. Sifford).

No browns or blacks have ever been elected to the House of Representatives from District 32 (Tarrant County). (Vol. III, p. 1148, App. - Betty Fischer). From 1960 to 1972 there have been 136 candidates for the House of Representatives in the Democratic primary in District 32 or Tarrant County. (Appellee Escalante X 4, Vol. VI, p. 2386, App.). Only two browns have run during that period of time, (Vol. III, pp. 1147, 1148, App. - Betty Fischer; Vol. III, pp. 1083, 1084, App. - J. W. Sifford), and only three blacks have

run. (Vol. III, p. 1147, App. - Betty Fischer). No blacks or browns ran prior to 1960. (Vol. III, p. 1146, App. - Betty Fischer; Vol. III, pp. 1083, 1084, App. - J. W. Sifford). No blacks or browns have ever been elected in other county-wide races in Tarrant County. (Vol. III, pp. 1119-1121, App. - J. W. Sifford).

All three of the black candidates for the legislature resided in the predominantly black community in Fort Worth. (Appellee Escalante Xs 6a-6c, Vol VI, p. 2406, App.).

The following table shows racially where the current all-white delegation from District 32 (Tarrant County) reside:

State Representative	Census Tract No.	% White Pop.	% Black Pop.	% Brown Pop.
Evans	134.01	96	-	4
Hilliard	65.02	99	-	1
Sherman	56	95	-	5
Lewis	65.01	94	-	6
Schieffer	109	100	-	-
Spurlock III	133.02	100	-	-
Finney	105	98	-	2
Miller	51	96	-	4
Willis	1.01	94	3	3

(Appellee Escalante X 3a-i', Vol. VI, p. 2584, App.).

In 1972 a 36-year old black named Bobby Webber ran for the Texas House of Representatives from District 32 (Tarrant County). He mounted a very successful

campaign which resulted in his getting just over 46% of the vote in the Democratic primary run-off. (Appellee Escalante X 7b, Vol. VI, p. 2408, App.). No black has ever come this close to winning a legislative race in Tarrant County. However, many of the 675,000 people in District 32 (Tarrant County) were not aware that Mr. Webber was black. He stayed off of television, but ran a lot of ads in the newspapers and radio. (Vol. III, p. 1094, App. - J. W. Sifford). His opponent named "Schieffer" was politically disadvantaged by a less attractive name according to Tarrant County political expert J. W. Sifford. (Vol. III, p. 1094, App. - J. W. Sifford). His opponent was a 24-year old white man. (Vol. III, p. 1094, App. - J. W. Sifford). Mr. Webber had the support of the labor-liberal-black-brown coalition (Vol. I, pp. 166, 167, App.). Mr. Webber reported spending almost three times as much as his opponent. (Vol. III, pp. 1178, 1184, 1185, App. - Betty Fischer). Only $1300.00 to $1400.00 of his campaign money came from the black community, the rest being from his own personal resources or from the white community. (Vol. I, p. 167, App.). Before the first primary one of the other white candidates was indicted for a criminal offense (Vol. III, p. 1093, App. - J. W. Sifford). Mr. Webber, president of Midas Investment Corporation, was wealthier than most blacks and spent a large amount of his own money. (Vol. III, pp. 1241, 1242, App. - R. C Johnson; Vol. I, p. 162, App. - Betty Fischer). His opponent, Tom Schieffer, had the support of the Seventh Street slate-makers. (Vol. III, p. 1163, App. - Betty Fischer).

Political expert Dr. Charles Cottrell testified that Webber is not typical of the economic levels of his own ethnic minority community and this atypicality would have a significant effect on his relative success in a campaign. (Vol. II, p. 657, App. - Dr. Charles Cottrell). He further testified that anglicized minority group members like Mr. Webber come closer to meeting white majority points of view than do other blacks more typical of their own ethnic minority. (Vol. II, p. 692, App. - Dr. Charles Cottrell).

In spite of the coalascing of the many favorable factors for Mr. Webber, he nevertheless lost by over 5,000 votes. (Vol. I, p. 168, App. - Betty Fischer).

Political experts J. W. Sifford and Dr. Charles Cottrell concurred that in all probability, Mr. Webber could not make as good a showing a second time (in 1974) as he did in 1972. (Vol. II, pp. 690, 691, App. - Dr. Charles Cottrell; Vol. III, p. 1095, App. - J. W. Sifford). As demonstrated by Appellants in their brief, pp. 61 through 66 thereof, Mr. Webber received 43% in 1974 (versus 46% in 1972).

The black community as a whole feel justifiably that a black candidate simply cannot get a sufficient number of white votes to win district-wide. (Vol. III, p. 1231, App. - R. C. Johnson). Political expert Dr. Charles Cottrell testified that multi-member districts in Tarrant County worked to cancel or minimize minority voting strength, particularly when slating processes are used to eliminate

participation. (Vol. II, pp. 653, 654, App. - Dr. Charles Cottrell).

C. Present And Past State Representatives From District 32 (Tarrant County) Have Been Unresponsive To The Particularized Needs Of Blacks And Browns In District 32 (Tarrant County).

The Tarrant County delegation has supported measures in the past which adversely affect the particularized interests and needs of the black, brown, and poor communites of Tarrant County. (Vol. I, p. 121, App. - Betty Fischer). For example, the delegation voted in favor of state and city sales tax. (Vol. I, p. 121, App. - Betty Fischer). Representative Gibson Lewis, a witness for the State, testified that he voted in favor of creating a state holiday in memory of Lyndon Baines Johnson (Vol. I, p. 210, App.), but he voted against creation of a state holiday honoring Martin Luther King. (Vol. I, p. 131, App. - Betty Fischer).

Tarrant County political expert, J. W. Sifford, testified that the responsiveness of the present Tarrant County delegation to the needs of the black community was not good. (Vol. III, p. 1112, App. - J. W. Sifford). Some examples with respect to the black community was the anti-busing stand of the delegation and their failure to support economic issues of interest to the blacks such as nursing homes, or introduction and support of a bill permitting high interest rates, or failure generally in the area of consumer loss,

and their opposition to single-member districts for the House of Representatives in Tarrant County. (Vol. III, pp. 1112-1114, App. - J. W. Sifford).

However, the primary failure of the Tarrant County delegation with respect to particularized interests of the black, brown and poor communities is demonstrated more by their failure to originate and sponsor legislation of particular interest to such groups rather than their "yea" or "nay" votes on bills originated and sponsored by others. (Vol. I, pp. 121-122, App. - Betty Fischer).

The problem was graphically stated by Representative Carlos Truan from Corpus Christi:

> "You can't really appreciate the value of bilingual education unless you have been physically abused for speaking a language that your parents have spoken."
>
> "You can't fully appreciate not having any food on the table unless you have had that experience. And so if you have an opportunity to push for legislation creating the food stamp program statewide, you are going to push for that specific legislation." (Vol. II, p. 545, App.).

Tarrant County political expert R. C. Johnson testified that the performance of the Tarrant County delegation with respect to blacks in Tarrant County was not satis-

factory. (Vol. III, p. 1237, App. - R. C. Johnson). As examples, he cited their failure to support minimum wage laws, open housing laws, employment discrimination laws, prison reform laws, and welfare reform laws. (Vol. III, pp. 1237, 1247, 1248, App. - R. C. Johnson).

The testimony developed by Appellant in attempting to show some responsiveness on the part of the Tarrant County delegation was far from sufficient to rebut the Trial Court's finding and Appellee's showing of unresponsiveness.[11]

The following are issues of particular interest to the black, brown, and poor communities of Tarrant County, in which members of the Tarrant County delegation have failed to sponsor or originate significant legislation:

1. Nobody from Tarrant County carried or voted for Day-care legislation (Vol. I, p. 121, App. - Betty Fischer).

2. The Narcotics Addicts Rehabilitation Administration hospital in Fort Worth was closed as a drug treatment facility on the basis that the State of Texas would take over that function, but no member of the Tarrant County delegation has fought to get that kind of service back into the

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[11] See Appendix B, infra at page 85, for a summary and discussion of the only significant testimony developed by Appellant tending to show responsiveness of Tarrant County delegation (reproduced in Appendix B because of length).

community (Vol. I, p. 121, App. - Betty Fischer; Vol. I, p. 212, App.).

3. No Tarrant County representative has ever offered a bill on non-discriminatory housing (Vol. I, p. 130, App. - Betty Fischer; Vol. I, p. 211, App.).

4. No Tarrant County representative has sponsored any civil rights legislation (Vol. I, p. 131, App. - Betty Fischer).

5. No member of the Tarrant County delegation has supported a bill promoting integration of the public schools (Vol. I, p. 131, App. - Betty Fischer; Vol. I, p. 211, App.).

6. No member of the Tarrant County delegation has sponsored legislation prohibiting employment discrimination on the basis of race by employers with less than 15 employees (Vol. I, p. 211, App.).

7. No member of the Tarrant County delegation has sponsored legislation guaranteeing non-discriminatory access to public facilities which are not engaged in interstate commerce. (Vol. I, p. 211, App.).

An item of particular interest to the black, brown and poor communities of Tarrant County in the last session of the legislature was the creation of single-member districts for the Texas State House of Representatives, the very issue in the present suit. During the last session of the legislature, it was the Tarrant County delegation which effectively blocked single-member districts in

Tarrant County. (Vol. I, p. 243, App.). State Representative Ed Harris from Galveston testified that Representative Finney from Tarrant County was at that time the Chairman of the State Affairs Committee of the House of Representatives, and that had Mr. Finney favored such a bill, the bill would have been reported out of committee, and the legislature could have voted on it. (Vol. i, pp. 245-246, App.). In fact, the Tarrant County delegation was so unresponsive to the cries of blacks for single-member districts that a number of Fort Worth blacks who felt a need for single-member districts contacted Representative Paul Ragsdale of Dallas, himself newly elected from a single-member district, about trying to get single-member districts in Tarrant County. (Vol. II, p. 489, App.).[12]

The unresponsiveness of the Tarrant County delegation to the particularized needs of blacks is well-illustrated by Representative Gibson Lewis, a witness for the state. He testified before the Trial Court that he was in favor of single-member districts for District 32 (Tarrant County). (Vol. I, p. 203, App.). He further testified:

> "Of course I introduced single-member districts at the time myself [1973 Legislative Session] because I felt that the legisla-

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[12] A single-member district created by the Trial Court below and upheld by this Court in White v. Regester, 412 US 755 (1973).

> ture has pretty much been instructed or given an indication the way they should go, that is to single-member districts. (Vol. I, p. 201, App.).

However, on cross-examination, he testified that in October of 1971, at the very time the legislative re-districting board was meeting to consider single-member districts, he told a reporter for the Fort Worth Star-Telegram that he favored multi-member districts and that the re-districting board would adopt multi-member districts because it was in the best interest of Texas. (Vol. I, p. 204, App.). He further testified that in June of 1973, following the Supreme Court's reversal in part of this case on appeal (White v. Regester), that he told a news reporter, "I don't look for Tarrant County to go to single-member districts for the next ten years until we have a new census count." (Vol. I, pp. 204-205, App.). He further testified that it would be a hardship on the incumbents if the Trial Court ordered single-member districts in District 32 (Tarrant County). (Vol. I, pp. 199-200, App.).

Dr. Charles Cottrell, a political expert who studied the effect of multi-member districts across the state, testified that multi-member districts generally tend to dilute the effectiveness of legislative representation of particular needs of minority groups. (Vol. II, p. 558, App. - Dr. Charles Cottrell).

It is clear that the Trial Court had ample evidence to find that the nine-member delegation from Tarrant County in the House of Representatives is unresponsive to the needs of blacks and other minority groups in the community.

D. The Factors Of Majority Vote Requirement, Place Requirement, Lack of Geographical Sub-Districts Within The Multi-Member District, And The Large Size of District 32 (Tarrant County) Greatly Aggravate The Denial Of A Meaningful Access To The Electoral Process Of Blacks And Browns In District 32 (Tarrant County).

1. The Majority Vote Requirement, Not Present In Whitcomb v. Chavis, Aggravates Denial Of Meaningful Minority Access To The Electoral Process.

Unlike the Indiana plurality requirement present in Whitcomb v. Chavis, 403 US 124 (1971), Texas has a majority requirement in the election of members of the State House of Representatives. Graves v. Barnes, 343 F.Supp. 704 at page 725 (W.D.Tex....1972), aff'd in part, rev'd in part, White v. Regester, 412 US 755 (1973).[13]

That a majority vote requirement reduces the chances of an identifiable minority group in any election where three or more persons are running for the same

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[13] Whitcomb v. Chavis, 403 US at page 160.

place is immediately apparent. In a three way race the theoretical thirty-four percent (34%) pluarlity necessary to win if the remaining two candidates garner sixty-six percent (66%) of the vote is much easier to achieve than the fifty-one percent (51%) which is always required under a majority system. While actual election results do not fall neatly into theoretically hypothesized catagories, it is nevertheless not difficult to see that a plurality requirement will always result in a winning percentage substantially less than fifty percent (50%) in any race containing three or more viable candidates. Moreover, this percentage would be reduced substantially further by each additional candidate over three. The very existence of a pluarlity requirement would certainly tend to encourage an abundance of candidates for each place.

The blacks and browns of District 32 and Tarrant County have never, either singly or in combination, achieved the necessary majority to elect a black or brown candidate. (Vol. III, pp. 1146-1149, App.; pp. 11a-14a, App. to Juris. Statement - Opinion below).

Bobby Webber, one of a very few black candidates who have ever run for the Texas House of Representatives, ran for the Texas House from District 32 (Tarrant County) in 1972 under optimum conditions for election of a black. He had the endorsement of the labor-liberal-coalition, was wealthy, spent nearly three times as much money as his opponent in the campaign, was not running against an incumbent, took

many positions on major issues which appealed to white and to middle class voters, and avoided any advertising which used either his picture or a suggestion that he was black. (Pp. 12a, 13a, App. to Juris. Statement - Opinion below; Vol. III, pp. 1094, 1178, 1184, 1185, 1241, 1242, App.). He managed to get in the run-off and received 46% of the vote, more than any other black candidate has ever received or is likely ever again to receive under a majority, at large system in District 32 (Tarrant County). (Pp. 12a, 13a, App. to Juris. Statement - Opinion below). While Webber would have lost even under a plurality system, he having come in second in the first primary, his 1972 race demonstrates the sheer impossibility of a black being elected by a majority vote in District 32 (Tarrant County).[14]

The majority vote requirement along with a history of disenfranchisement, has caused lower voter turnout in black precincts than in white precincts. (Pp. 16a, 17a, App. to Juris. Statement - Opinion below). In 1970 the primary saw a 28% black voter turnout and a 38% white voter turnout. The 1970 general election in District 32 (Tarrant County) saw the turnout of 43% of the black vote and 59% of the white vote. (Appellee Escalante X [8,9]', Vol. VI, p. 2589, App.). In the 1972 primary 40% of the blacks turned out while 50% of the whites came to the polls

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[14]See pp. 34 - 37 , supra, for a complete discussion of this race.

and in the 1972 general election in District 32 (Tarrant County) 53% of the blacks turned out versus 70% of the whites. (Appellee Escalante X [8,9]', p. 2590, App.). A Tarrant County political expert testified that the registration in voting among browns is as low as it is among blacks. (P. 17a, App. to Juris. Statement - Opinion below).

Dr. Charles Cottrell, who was employed by all Appellees as an expert witness in the field of political science, (Vol. II, p. 555, App.; Plaintiff Wright Exhibit #4, p. 8b, original record) testified that the majority system did enhance the discriminatory effects of multi-member districts. (Vol. II, pp. 651 652, App. - Dr. Charles Cottrell).

2. The Lack Of Provision Requiring Candidates To Reside Within Geographical Sub-Districts Of The Multi-Member District, A Factor Present In Whitcomb v. Chavis, Aggravates Denial Of Meaningful Minority Access To The Electoral Process.

There is no provision requiring at-large candidates in District 32 (Tarrant County) to reside in a particular geographical sub-district. Graves v. Barnes, 343 F.Supp. 704 at page 725 (W.D.Tex.... 1972), aff'd in part, rev'd in part, White v. Regester, 412 US 755 at page 765, note 10.

Theoretically, then, all of the members of the House of Representatives from Dis-

trict 32 (Tarrant County) could reside in a single apartment complex. The evidence in this case shows that the nine members of the present District 32 (Tarrant County) delegation to the House of Representatives reside in the following areas of District 32 (Tarrant County): four reside in the Northeast Quadrant where the mean family income is $12,605.00 and the ethnic breakdown is 95% white, 2% black, and 3% brown; three reside in the Southwest Quadrant where the mean family income is $13,374.00, and the ethnic breakdown is 87% white, 6% black, 7% brown; two reside in the Northwest Quadrant where the mean family income is $9,317.00, and the ethnic breakdown is 82% white, 7% black, and 11% brown (one of these representatives lives generally closer to the East side of the county with the result that he more properly identifies with the community of interest in the Northeast Quadrand above); and none reside in the Southeast Quadrant which has a mean family income of $9,093. and the ethnic breakdown of which is 61% white, 36% black, and 3% brown. The Southeast Quadrant contains a large predominantly white middle class city [Arlington] which when excluded from the Southeast Quadrant leaves the mean family income at $8,815.00, and the ethnic breakdown at 49% black and 47% white. (Vol. I, pp. 61-70, App.; Appellee Escalante X la', lb', pp. 2574-2577 App.). Of the present nine members of the District 32 (Tarrant County) delegation to the Texas House, two reside in census tracts that are 94% white, one in a census tract 95% white, two in census tracts that are 96% white, one in a

census tract that is 98% white, one in a census tract that is 99% white, and two in census tracts which are 100% white. (Appellee Escalante Xs 3a'-3i', p 2584, App.). Only one of these representatives lives in a census tract with a measurable percentage of blacks (3%). The remaining census tracts of the other six representatives with less than 100% white contain various small percentages of browns. (Appellee Escalante Xs 3a'-3i', p. 2584, App.).

It is thus clear that the present nine white members of the District 32 (Tarrant County) delegation are effectively sociologically insulated from the blacks and browns of District 32 (Tarrant County). That sociological insulation would not be much greater if all nine members lived in a single all-white apartment complex.

3. The Place Requirement, Not Alluded To, And Apparently Not Present in Whitcomb v. Chavis, Aggravates Denial Of Meaningful Minority Access To The Electoral Process.

The nine separate places in which candidates for the Texas House of Representatives must run in District 32 (Tarrant County) have nothing to do with specified geographical sub-districts of District 32 (Tarrant County). As shown above there are no sub-districts.

The effect of the place requirement on minorities is simply to highlight the racial element in any election where a

member of a racial minority is running. Graves v. Barnes, 343 F.Supp. 704 at page 725 (W.D.Tex....1972), aff'd in part, rev'd in part, White v. Regester, 412 US 755 (1973). This Court expressly recognized that factor in White v. Regester, supra at page 765.

Dr. Charles Cottrell, a political science expert who has made a study of the electoral process in the State of Texas, testified that this feature of the Texas electoral process did aggravate the discriminatory effect of multi-member districts on racial minorities. (Vol. II, pp. 651, 652, App. - Dr. Charles Cottrell).

The proof in this case shows positively that there is voter polarization by race in District 32 (Tarrant County). According to the available statistics, no black has ever received more than 27% of the vote of the predominantly white precincts. (Appellee Escalante Xs 7a'-7c', Vol. VI, pp. 2585, 2586, App.). Thus it is obvious that isolation of the racial factor places a black candidate at a distinct and proven disadvantage.

4. The Large Size of District 32 (Tarrant County) Aggravates Denial of Meaningful Minority Access To The Electoral Process, And Magnifies The Adverse Effects Of The Three Factors Listed Above On Access Of Minorities To The Electoral Process.

The Tarrant County multi-member district (District 32) has a population of

675,000 which is a greater population than six states: Alaska (302,000); Delaware (548,000); Nevada (488,000); North Dakota (617,000); Vermont (444,000); and Wyoming (332,000). In addition the population area is approximately equal to that of one other state, Montana (694,000). Graves v. Barnes, 343 F.Supp. 704 at page 725 (W.D.Tex....1972), aff'd in part, rev'd in part, White v. Regester, 412 US 755 (1973).

It is undisputed that a candidate who has to reach nine times as many potential voters as his counterpart in a single-member district must use the mass media to reach his potential voters. Thus a candidate in a large multi-member district must either have a personal fortune sufficient to make such expenditures or he must be able to attract sufficient monied interests to support his candidacy. The single hope which a minority candidate (without a personal fortune) has is to be slated by some district-wide group which is hoping to attract minority voters for its other white candidates. This has occurred in District 32 (Tarrant County) to a limited degree, but unfortunately the minority candidate simply cannot be elected. The district is simply too large. The slate-makers having made their token gesture to the minority community in order to attract votes, refuse to provide as much support, money, and effort to a minority candidate as they do to white candidates for the simple reason that all concerned know in advance that the minority candidate cannot win. Repeated name exposure and repeated spending

of large sums of money avail nothing.

The most promising black candidate of the very few who have run from District 32 (Tarrant County), Bobby Webber, ran again in 1974 as alleged by Appellants on pages 26 and 27 of their brief and as shown in Exhibit A, pages 61-66 thereof. Although Webber was a wealthy, young, black businessman, who ran an aggressive campaign, and who polled an unprecedented 46% in the 1972 election when he had carefully avoided exposure as a member of the black race, he received 43% of the vote in 1974.

Larry York, counsel for Appellant below and before this Court eloquently demonstrated the misapprehension of many persons with regard to possible future election of blacks from District 32 (Tarrant County).

> Q. (by Mr. York): Well we are all aware of that. And none [blacks or browns] have been elected from Tarrant County since reconstruction. We are aware of that. Or since the earth was created, we are all aware of that. But if we took the last five years in Tarrant County and look at what might happen to Mr. Webber if he ran the next time [1974], having some name identification and having some identification before the public and having come that close the last time and look at it now and what has happened recently instead of the dim distant past,

don't you think he might just by golly get elected the next time he ran?

A. (by Dr. Charles Cottrell, political science expert): No I don't, Mr. York.

Q. You don't think he would come up that three or four percentage points?

A. It might be with that kind of familiarity that he would receive even less support.

(Vol. II, pp. 690, 691, App. - Dr. Charles Cottrell).

As perfectly demonstrated by Mr. York in Appellant's brief, Mr. Webber in fact lost three percentage points in the next election going from 46% in the 1972 election to 43% in the 1974 election.

II. THE RELATIVELY ECONOMICALLY DISADVANTAGED PERSONS OF DISTRICT 32 (TARRANT COUNTY) HAVE DEMONSTRATED THAT THEY HAVE BEEN DENIED EFFECTIVE PARTICIPATION IN THE ELECTION PROCESS FOR THE TEXAS HOUSE OF REPRESENTATIVES.

This Court has not held, and the Court below did not hold in the case at bar, that identifiable economic minorities are entitled to attack the constitutionality of multi-member districts, even when they can demonstrate a discriminatory effect against their class of persons. It is here urged that if the quantum of proof is great enough, economic minorities are just as entitled to demonstrate that they have been excluded from the election process as any other identifiable minority. However, if this Court is unwilling to accept this proposition, the discussion herein is much more than academic with respect to the question of submergence of identifiable racial minorities. Only a cursory glance at the available statistics demonstrates that blacks and browns as an identifiable class are at a large and demonstrable economic disadvantage in comparison with the white majority.[15] Thus the demonstration herein that economically disadvantaged persons do suffer identifiable submergence in the political process means that racial minorities suffer double discrimination: once as a member of a racial minority and again as a poor person.

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[15] See discussion infra at pp. 62-63.

District 32 (Tarrant County) for the Texas House of Representatives has a total population of 675,000 persons (Appellee Escalante X 1a, Vol. VI, P. 2378, App.). The ideal single-member district consists of 75,045. (Vol. I, pp. 132-133, App. - Betty Fischer). A candidate running district-wide thus has to reach nine times as many people as would a candidate in a single-member district.

The minimum cost of a House campaign in District 32 (Tarrant County) is $20,000. (Vol. III, P. 1089, App. - J. W. Sifford). Expense reports of recent Democratic candidates for the State House of Representatives for District 32 (Tarrant County) are contained in Appellee Escalante Exhibits 10a, 10b, 11a, 11b, 13a, and 13b. Those expenses are significantly higher than some other single-member districts in the state: for example, District 8 (Orange County), Appellee Escalante Exhibits 14a, 14b, 14c; and District 42, (which contains the remaining portion of Tarrant County), Appellee Escalante Exhibits 15a and 15b. In connection with District 32 (Tarrant County) expense reports, it should be remembered that there is much money and work spent on political campaigns that does not find its way onto expense reports. (Vol. I, p. 37, App. - J. W. Sifford). Moreover, slated candidates get more of these unreported benefits. (Vol. I, pp. 37, 38, App. - J. W. Sifford). Also, incumbents spend quite a bit less since their name has already become familiar to voters. (Vol. III, pp. 1125, 1126, App. - J. W. Sifford).

Tarrant County political expert J. W. Sifford testified that getting elected to the House of Representatives is mostly a matter of name exposure, and that familiarizing the electorate with a candidate's name is the greatest expense. (Vol. I, pp. 38, 39, App. - J. W. Sifford). In a large district such as District 32 (Tarrant County), the only practical way to achieve name exposure is through media advertising: radio, television, and newspapers. Media advertising is a very big expense item in the budget of a candidate. (Vol. III, p. 1101, App. - J. W. Sifford). Moreover, media advertising is not very effective unless there is saturation, which makes such advertising much more expensive. (Vol. III, p. 1104, App. - J. W. Sifford). Moreover, radio, television, and newspapers now require "cash on the barrelhead" before furnishing the advertising to political candidates. (Vol. III, p. 1101, App. - J. W. Sifford).

Appellee John Dillard, a 23-year old college student from a working-class neighborhood consisting of 50% white and 50% black and made up primarily of unskilled workers, testified that he had thought of running for the legislature, but has never been able to seriously consider it because it is much too costly to run district-wide. (Vol. I, pp. 50-54, App.). He testified that he was a Sociology major at North Texas State University, that his earnings for the previous year were approximately $2,700.00, and that his parents earned approximately $5,000.00 last year. (Vol. I, pp. 50-54, App.). However, he testified that if it happened

that there was a single-member district, it is feasible to conduct a door-to-door campaign and, that he, or someone in his economic circumstances, might give serious consideration to running. (Vol. I, p. 55, App.). He testified that he thought a shoe-leather campaign could feasibly be run in a district with 75,000 population. (Vol. I, pp. 59,60, App.).

Tarrant County political expert J. W. Sifford remembers that there was a time in the past when a county-wide mailout of hand-bills had to be made to only 20,000 voters in a House race. (Vol. III, p. 1123, App. - J. W. Sifford). He further testified that increase in population, permanent registration, voter registration drives, and abolition of poll taxes has raised the number of voters that need to be reached to over 320,000 county-wide. (Vol. III, pp. 1122, 1123, App. - J. W. Sifford). He further testified that based on this 320,000 voter quantity, that if there were single-member districts in District 32 (Tarrant County), a mail-out to approximately 30,000 voters would be all that is required for an effective House campaign. (Vol. III, p. 1123, App. - J. W. Sifford). As to the use of media advertising in a single-member district, Mr. Sifford stated:

> "I think that it is very practical to win a race without any radio, television, or newspapers. In fact, it would be a considerable amount of waste." (Vol. III, p. 1103, App. - J. W. Sifford).

In his opinion, a door-to-door campaign would be the most practical and effective campaign in a single-member district, but that presently a door-to-door campaign in a multi-member district the size of District 32 (Tarrant County) is impossible. (Vol. III, p. 1102, App. - J. W. Sifford). The cost of a direct mail-out to voters county-wide has gone up so much that it is now prohibitive. (Vol. III, p. 1100, App. - J. W. Sifford). He further testified that there was a time, when there were only 20,000 voters, that a labor candidate could get elected to the House on one good mail-out to every voter in the county. (Vol. III, p. 1100, App. - J. W. Sifford).

Political expert, Dr. Charles Cottrell stated that the nine-member multi-member district in Tarrant County has the effect of suppressing the economically poor. (Vol. II, P. 655, App. - Dr. Charles Cottrell). It should be noted that no State Representative has ever been elected from the Southeast Quadrant of District 32 (Tarrant County), which has a higher concentration of relatively poor persons than the other three quadrants. (Appellee Escalante X 1b, Vol. VI, p. 2379, App.).

There are significant economic diverfencies within District 32 (Tarrant County). The mean family income of District 32 (Tarrant County) is $11,296.00. There are 29 census tracts in District 32 (Tarrant County) wherein the mean family income falls more than $3,000.00 below the mean for the entire district, or below $8,000.00. There are 33 census tracts

in the district where the mean family income falls more than $3,000.00 above the district mean family income, or above $14,000.00. The remaining 86 census tracts have mean incomes ranging within $3,000.00 above or below the district mean income of $11,296.00.[16] Evidence of the extreme divergence of economic well-being is demonstrated by the following statistical information for two high income and two low income census tracts.

HIGH INCOME TRACTS

Tract 54.02:

Mean Family Income	$26,825.00
Mean Family Size	2.61
Total Number of Families in Tract	2,253
Ethnic Make-up of Tract	100% white
No. of Families With Incomes of $25,000 to $49,999	698

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[16]This information is demonstrated geographically on Appellees Escalante et al Exhibit 1e wherein the high income census tracts are shown in purple and the low income census tracts are shown in pink, and in Appellee Escalante et al Exhibit 1f wherein the high income tracts are shown by diagonal lines and the low income tracts are shown by dots. (Maps are contained in the Original Record, but are not legibly reproduced in the Appendix.

No. of Families With Incomes over $50,000	223

Tract 106.02:

Mean Family Income	$40,693.00
Mean Family Size	Not Shown - Too Small
Total Number of Families in Tract	97
Ethnic Make-up of Tract	98% white
No. of Families With Incomes of $25,000 to $49,000	31
No. of Families With Incomes over $50,000	23

LOW INCOME TRACTS

Tract 11:

Mean Family Income	$4,437.00
Mean Family Size	4.62
Total Number of Families in Tract	382
Ethnic Make-up of Tract	86% black 10% brown 4% white
No. of Families With Incomes less than $1,000.00	29

No. of Families With Incomes of $1,000 to $1,999	46
No. of Families With Incomes of $2,000 to $2,999	56

Tract 17:

Mean Family Income	$3,604.00
Mean Family Size	4.56
Total Number of Families in Tract	702
Ethnic Make-up of Tract	95% black 1% brown 4% white
No. of Families With Incomes Less Than $1,000	105
No. of Families With Incomes of $1,000 to $1,999	126
No. of Families With Incomes of $2,000 to $2,999	171

(Appellee Escalante X 1e', Vol. VI, pp. 2580-2582, App.; Appellee Escalante Xs 2a, 2b).

Members of the current delegation reside in census tracts with mean incomes as shown in the following table:

State Representative	Census Tract No.	Mean Family Income
Evans	134.01	$ 14,000
Hilliard	65.02	18,288
Sherman	56	12,737
Lewis	65.01	17,368
Schieffer	109	14,465
Spurlock III	133.02	11,860
Finney	105	10,432
Miller	51	20,948
Willis	1.01	10,833

(Appellee Escalante Xs, 2a, 2b; Appellee Escalante Xs 3a-3i, Vol. VI, pp. 2383-2385, App.).

It is clear that the poor of District 32 (Tarrant County) have no reasonable access to the election machinery, and it is readily apparent that such persons have no means of inducing or persuading a member of the Tarrant County delegation to be responsive to their particularized needs. The evidence conclusively demonstrates that breaking up District 32 (Tarrant County) into nine single-member districts would largely remedy this political submersion.

III. BLACKS AND BROWNS ARE DENIED EFFECTIVE ACCESS TO THE PROCESS OF ELECTING CANDIDATES TO THE TEXAS HOUSE OF REPRESENTATIVES NOT ONLY BY VIRTUE OF THEIR RACE BUT ALSO BECAUSE OF THEIR ECONOMICALLY DISADVANTAGED STATUS.

Appellees have demonstrated that the economically disadvantaged persons living in District 32 (Tarrant County) have been denied effective participation in the election process for the Texas House of Representatives. (See II above).

In order to demonstrate that blacks and browns are twice denied access to the election process--once as minority racial members and once as economically disadvantaged persons--it remains only to be shown that blacks and browns bear the brunt of economic hardship in District 32 (Tarrant County). As might be expected anywhere in the South, this should not be difficult to prove, if true, since minority racial members are typically segregated from their white neighbors.

District 32 (Tarrant County) has 147 census tracts (Appellee Escalante Xs 2a, 2b). The mean income per family in District 32 (Tarrant County) is $11,296.00. (Appellee Escalante X 1a', Vol. VI, p. 2574, App.; Appellee Escalante Xs 2a, 2b). The twelve census tracts which have more than 75% black population have a mean income of $6,288.00. The two census tracts with more than 75% brown population have a mean income of $7,622.00. The three census tracts which have more than 75%

combined black and brown population have a mean income of $6,901.00.

In contrast, the 109 census tracts with more than 75% white population have a mean income of $13,570.00. (Appellee Escalante Xs 2a, 2b). These statistics account for all but 21 of the 147 census tracts in District 32 (Tarrant County) and adequately demonstrate that blacks in District 32 (Tarrant County) make less than half the income of their white counterparts.

IV. ADOPTION BY THE TRIAL COURT OF APPELLEE ESCALANTE PLAN PROVIDING NINE SINGLE-MEMBER DISTRICTS WAS NOT AN ABUSE OF DISCRETION.

The Trial Court had before it four different plans for single-member districts in District 32 (Tarrant County): the Escalante plan, the Republican plan, the Gaskin plan, and the Briscoe-White-1 plan (State plan). (Vol. III, p. 1001, App.). The Court adopted the Escalante plan. From among the parties submitting plans, only the State of Texas gave notice of appeal, and therefore it is only relevant here whether the Trial Court abused its discretion in rejecting the Briscoe-White-1 plan and adopting the Escalante plan.

A. Deviation

The optimum size of a single-member district in the State of Texas is 75,045. The Escalante plan has a deviation from the smallest to the largest of the proposed districts of 1.62% from the optimum size. (Vol. I, p. 136, App. - Betty Fischer).[17]

By contrast the State proposed plan for District 32 (Tarrant County) single-member districts--Briscoe-White-1--has a total deviation from smallest to largest of

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[17] Appellee Escalante plan for single-member districts for District 32 (Tarrant County) is set forth at Vol. VI, p. 2238, et seq. App.

its proposed districts of over six percent (6%). (Vol. II, pp. 856, 857, App.).[18]

Thus while the Escalante plan which was adopted by the Trial Court had minimal deviation from the optimum size of a single-member district, the State's plan had substantial and unjustified deviation from the optimum size.

B. Timeliness Of Filing Plan

On November 6, 1973, Appellee's Escalante et al exhibited the proposed single-member district plan which was ultimately adopted by the Trial Court for District 32 (Tarrant County) to the Appellant's counsel in the office of Appelee's counsel during depositions. On November 25, 1973, Appellees Escalante et al furnished the Appellants a copy of the census tract description of the proposed plan for the single-member districts of Esclante et al which was ultimately adopted by the Court. On December 3, 1973, Appellees Escalante et al offered into evidence in the main trial of this case their proposed single-member district plan for District 32 (Tarrant County). The Court admitted the same into evidence. (Appellee Escalante X 1f, 1g, Original Record; Vol. I, pp. 96, 97, 98, App.).

On January 7, 1974, the Trial Court set January 12, 1974, as a final deadline

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[18]The State's plan--Briscoe-White-1--is set forth at Vol. VI, pp. 2268, et seq. App.).

for Appellees to submit their proposed redistricting plans for the Court's consideration. (Vol. I, p. x, App.). At the same time the Trial Court set January 18, 1974, as a final deadline for all the Appellants to submit proposed redistricting plans for the Court's consideration. (Vol. I, p. x, App.). On January 11, 1974, Appellees Escalante et al filed their proposed single-member redistricting plan for District 32 (Tarrant County) for the Court's consideration, which plan was the same plan exhibited to Appellants on November 6, 1973, furnished to Appellants by census tracts on November 25, 1973, and offered and received into evidence on December 3, 1973, at the main trial of the case.

On the morning of the hearing set to determine which single-member district lines would be implemented (January 28, 1974), the Appellants urged a new plan which had not previously been exhibited to Appellees, and which was filed 10 days after the Court's deadline for submission of all plans.

The Trial Court was thus denied any opportunity whatsoever by Appellants to intelligently review the untimely plan offered by them on the morning of the hearing. Not only was the Court denied this opportunity, but Appellees were also denied any meaningful opportunity to study or make comparisons with this newly offered plan. In contrast Appellees Escalante et al proposed plan, which was ultimately adopted by the Trial Court, had been exhibited for all interested parties to see from and after November 6,

1973. The Court had in evidence Appellees Escalante et al plan since December 3, 1973.

It is respectfully submitted that the Trial Court did not abuse it's discretion in rejecting the Appellants' plan and adopting the plan of Appellees Escalante et al.

C. Objectivity And Rationality

The plan offered by the Appellants was one drafted by the present delegation of representatives from District 32 (Tarrant County). (Vol. II, pp. 847-851, App.). Seven of the nine members agreed on the Appellants' plan, one did not object and one was opposed to the plan. (Vol. II, p. 847, App.). It is well established in this record that the delegation of State Representatives from District 32 (Tarrant County) has been unresponsive to the needs and interests of the black and brown communities in the past. (Vol. III, pp. 1226, 1227, App. - R. C. Johnson). This is the same Tarrant County delegation which blocked single-member districts in the last session of the legislature.

The most flagrant example of the manner in which the State's plan was drawn is the testimony by Representative David Finney from District 32 (Tarrant County), who was successful in blocking single-member districts for Tarrant County during the last legislative session. He testified that the State's plan maximizes the political opportunites of the members of the delegation who were involved in the

development of the plan. (Vol. II, p. 858, App.). The Trial Court certainly did not abuse it's discretion in failing to adopt such a plan.

In contrast the political expert who drafted the proposed single-member district plan for Appellees Escalante et al - Betty Fischer - testified that she made an effort not to know exactly where any members of the present delegation lived until after she had constructed the proposed lines. (Vol. I, pp. 122, 123, App. - Betty Fischer).

It is feasible to divide District 32 (Tarrant County) into nine single-member districts and at the same time preserve dominant communities of interest within each district. (Vol. I, pp. 99-105, App. - Betty Fischer; Appellee Escalante Xs 1g, 1g', Vol. VI, p. 2574, App.). Tarrant County political expert Betty Fischer testified that the lines proposed in Appellees' Escalante et al exhibits 1g and 1g' would afford the people of ethnic and economic minorities in District 32 (Tarrant County) a better opportunity to effectively participate in their representative form of government. (Vol. I, pp. 105, 106, App. - Betty Fischer).

Mrs. Fischer testified that the proposed District 32-1 on Appellees' Escalante et al exhibit 1g (map in Original Record) would contain 50% black population and 22% brown population making it possible to elect a black from such a district. (Vol. I, pp. 99-100, App. - Betty Fischer). In that connection, she testified that

blacks and browns find more common grounds with each other in voting than does either group with whites. (Vol. I, p. 124, App. - Betty Fischer). She further testified that proposed District 32-2 would contain a large number of blacks and browns, though not a majority, but that this geographical area is a black growth area which is increasing in black population as blacks move out of the inner city. (Vol. I, pp. 100, 101, App. - Betty Fischer).

It should be noted that each of the other seven proposed districts would preserve some pre-existing identifiable community of ethnic or economic interest. (Vol. I, pp. 99-105, App. - Betty Fischer).

None of the proposed districts would give the brown population a majority since there are only 7 precincts scattered through the county with more than 30% brown population (Appellee Escalante X 1d, 1d', Vol. VI, pp. 2381, 2574, App.). However, she testified that in her proposed plan she did attempt to maximize the brown vote. (Vol. I, p. 109, App. - Betty Fischer).

Appellee Escalante proposed, and the Court adopted a viable plan by which identifiable previously existing communities of interest could be essentially preserved and by which at the same time blacks, browns, and economically disadvantaged persons may have an effective voice in the House of Representatives.

D. Inappropriateness Of Further Defferal To The Legislative Process

Since it is undisputed that the legislature will meet in 1975 prior to any future elections the question of deferring further to the State Legislature for action is now moot. The legislature will have another opportunity to adopt single-member district lines if it chooses to do so in 1975.

On the issue of whether this Court should defer to the legislature and give them yet another opportunity to adopt single-member districts, Mrs. Fischer testified that there have been single-member district proposal in the legislature as far back as 1961, that the Tarrant County delegation has been well aware of this Court's rulings in Dallas and Bexar Counties, and that some members of the Tarrant County delegation have even used the single-member district issue as a campaign issue. (Vol. I, pp. 135, 136, App. - Betty Fischer). Thus the Tarrant County delegation has had more than ample time to act if they had wanted to. (Vol. I, pp. 135, 136, App. - Betty Fischer). However, the undisputed testimony of Representative Ed Harris from Galveston was that the Tarrant County delegation itself was responsible for blocking single-member district proposals in the 1973 session of the legislature. (Vol. I, pp. 243, 245, 246, App.).

In Tarrant County Democratic primaries there are very long ballots. By the time people get down to State Representative on the ballot, they usually do not care much. (Vol. III, p. 1128, App. - J. W. Sifford). This problem is aggravated

geometrically in a nine member multi-member district since three candidates for each place would mean a total of 27 candidates in the House race alone. (Vol. III, pp. 1123, 1129, App. - J. W. Sifford). However, there is ample evidence in this record that the advent of single-member districts would increase interest in the House race and would result in greater voter turnout. Tarrant County political expert R. C. Johnson testified that in the black community there would be a greater voter turnout if there were two black candidates running from a predominently black constituency. (Vol. III, p. 1254, App. - R. C. Johnson). Representative Paul Ragsdale from Dallas County testified that the advent of single-member districts in Dallas increased the interest in legislative races there. (Vol. II, p. 482, App.).

It is respectfully submitted that on the basis of abundant evidence in this record, as to District 32 (Tarrant County), the Trial Court did not abuse its discretion in adopting Appellees Escalante single-member district plan for District 32 (Tarrant County).

CONCLUSION

The most reliable guide we have in determining the constutionality of multi-member districts is this Court's opinion in White v. Regester, 412 US 755 (1973). That opinion has more than usual significance in the instant case, however, since the case at bar is a continuation of White v. Regester on remand. Not only is this Court's opinion in White v. Regester, supra, the law of this case, but all of the findings in the three-judge district court in Graves v. Barnes, 343 F.Supp. 704 (W.D.Tex....1972) which were left undisturbed by this Court's opinion in White v. Regester are equally binding upon the parties to this litigation and indeed upon this very Court.

Whitcomb v. Chavis, 403 US 124 (1971) is not only an earlier statement of the law than White v. Regester, supra, it is factually distinquishable from the case at bar in the following particulars:

1. Indiana did not have a history replete with ractial discrimination, while the record in this cause shows exactly the opposite;

2. Indiana had a plurality election provision whereas Texas has a majority-place system requiring that the winning candidate always receive at least 51% of the vote;

3. In Whitcomb v. Chavis blacks had met with some success in being elected from the multi-member there

challenged, whereas in the case at bar no black or brown has ever been elected from the multi-member district in question. The proof in the case at bar demonstrates that a black can probably never be elected in this multi-member district in the climate which now prevails;

4. In Indiana there was a viable two-party system in which neither dominate party held absolute sway, while in the case at bar the proof is undisputed that no Republican has ever been elected to the Texas House of Representatives, the legislative races being 100% dominated by Democrats; thus blacks and browns have no choice but to seek access to the political process through one party which the proof has shown to be virtually closed to the candidacy of blacks and browns;

5. The evidence in Whitcomb v. Chavis did not purport to show that ghetto inhabitants were regularly excluded from the slates of both major parties while in the case at bar there is proof that they are not only excluded from the slate itself but also from the ranks of the slate-makers;

6. In Whitcomb v. Chavis the proof showed that the Democratic Party, which was the one predominately supported by ghetto residents, slated candidates satisfactory to the ghetto while in the case at bar

it is undisputed that blacks and browns are afforded little or no input into the slate-making process;

7. In Whitcomb v. Chavis there was no showing made that ghetto interests were in particular legislative situations nor anything to show recurring poor performance by the Marion County delegation with respect to the ghetto, while in the instant case there is ample evidence showing that the interests of the blacks and browns are and that these have been completely ignored by the Tarrant County delegation in the case at bar;

8. In Whitcomb v. Chavis there was apparently no showing that the choice of multi-member districts in the first place was completely capricious, while in the case at bar it is undisputed from the undisturbed findings in Graves v. Barnes, 343 F.Supp 704 (W.D.Tex....1972) that the Legislative Redistricting Board's choice of single-member districts for Harris County and multi-member districts elsewhere was at best a non-decision, and at worst a completely capricious and arbitrary judgment on behalf of the board without any reason therefor rational or otherwise.[19]

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[19]The proof in Graves v. Barnes showed that the Legislative Redistricting Board whose plan for District 32 (Tarrant County) is here attacked:

This Court in White v. Regester, supra, in its opinion holding unconstitutional the multi-member district in Dallas County, Texas, significantly wrote as follows:

> "More fundamentally, it [Trial Court] found that since reconstruction days, there had been only two negros in the Dallas County delegation to the Texas House of Representatives and that these two were the only

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a. Never acted as a board but only as individuals;

b. Met only four times to deliberate;

c. Did not participate as a full board in two of its meetings;

d. Did not meet as a full board to approve its final plan; it was merely passed around;

e. Never considered or discussed the general issue of single-member districts vs. multi-member districts;

f. There was never any rational or consistent explanation of the differing treatments accorded to Harris County (which the board did divide into single-member districts) as contrasted with every other metopolitan area in Texas;

g. The Redistricting Board was given absolutely no legislative guide lines by which to proceed;

h. The only "policy" of the Redistricting Board regarding single-member districts--that once a county obtained a million or more residents in the future they would be sub-divided for single-member districts--was called to the board's attention during its public hearings but was completely ignored in the case of Dallas County, 343 F. Supp. 716, 717.

> two negros ever slated by the Dallas Committee for Responsible Government (DCRG), a white dominated organization that is an effective control of Democratic Party candidates slated in Dallas County." 412 US at pp 766,767.

In contrast there has been no black or brown ever elected to the House of Representatives from Tarrant County.

It is respectfully submitted that the proof offered by Appellees as to District 32 (Tarrant County) is as strong or stronger than that reviewed by this Court in White v. Regester involving Dallas County, and that the effects of the discrimination in Tarrant County have been even more egregious in Tarrant County than in Dallas County.

PRAYER

For these reasons it is respectfully submitted that the judgment of the Trial Court below is correct and should be affirmed.

Respectfully Submitted

DON GLADDEN

MARVIN COLLINS

Attorneys for Appellees Escalante, et al

October 10, 1974

APPENDIX A

SUMMARY OF EXPERT WITNESSES QUALIFICATIONS

Witnesses who qualified as experts on the political process in District 32 (Tarrant County) are discussed herein solely with reference to their background and qualifications as experts.

1. Joyce Wendell Sifford

The witness J.W. Sifford testified both on oral deposition and in the trial of this cause as an expert on Tarrant County politics on behalf of Appellees Escalante, et al. His qualifications and background are set forth herein.

J.W. Sifford has lived continously in Tarrant County since 1947 (Vol. 3, p. 1014, App. - J.W. Sifford). He was a union employee at Convair, working for 4 years as an aircraft mechanic from 1947 to 1951 (Vol. 3, p. 1018, App. - J.W. Sifford). Immediately thereafter he became an aircraft mechanic employed by American Airlines, in which employment he became active in a labor union (Vol. 3, pp. 1019, 1020, App. - J.W. Sifford).

He became a delegate to the Industrial Union Council of the CIO in 1956, which organization engaged in civic enterprise, public relations, community services, promotion of legislation and political activities in general (Vol. 3, p. 1020, App. - J.W. Sifford). He was a delegate in 1956 to the Political Action Committee

of the CIO (the political arm of the CIO), before which committee candidates for the State Legislature were interviewed and discussed (Vol. 3, pp. 1021. 1022, App. - J.W. Sifford). The Political Action Committee, to which he was a delegate, supported selected slates of candidates, worked for their election, devoted much time to campaign activities, provided funds for candidates, and printed and distributed by hand slate cards to members of the CIO (Vol. 3, pp. 1023-1025, App. - J.W. Sifford).

In the fall of 1956 the AFL and CIO merged and a new political arm of the union was formed: "Tarrant County Central Labor Union Council, AFL-CIO." (Vol. 3, pp. 1026, 1027, App. - J.W. Sifford). Mr. Sifford immediately thereafter became a delegate to the Tarrant County Central Labor Council and has been such a delegate continuously every year since that time. (Vol. 3, pp. 1027, 1028, App. - J.W. Sifford). The Tarrant County Central Labor Council performed the same functions formerly undertaken by the Political Action Committee of the CIO, interviewing, slating, and supporting particular candidates for the legislature. (Vol. 3, p. 1026, App. - J.W. Sifford). The Tarrant County Central Labor Council has fulfilled these functions every year from 1958 to the present time. (Vol. 3, p. 1026, App. - J.W. Sifford). In 1961 Mr. Sifford was elected President of the Tarrant County Central Labor Council and has since that time been President "more ofter than not." (Vol. 3, pp. 1029, 1049, App. - J.W. Sifford). Most recently he

was President for the years 1971 and 1972. (Vol. 3, p. 1049, App. - J.W. Sifford).

Mr. Sifford is now a member of the executive committee of the Democratic Party in Tarrant County. (Vol. 3, p. 1033, App. - J.W. Sifford). Through the years he has attended all of the State Democratic Conventions. (Vol. 3, p. 1034, App. - J.W. Sifford).

He has been very prominant in the process of slating candidates for the State Legislature. (Vol. 3, pp. 45, 1031-1039, 1041-1043, 1045-1047, 1049, 1050, 1059-1062, 1081-1083, 1085-1087, 1089, 1098, 1105, 1106, 1108, 1111, App. - J.W. Sifford).

2. Betty Fischer

The witness Betty Fischer testified both on oral deposition and in the trial of this cause as an expert on Tarrant County politics on behalf of Appellees Escalante, et al. Her qualifications and background are set forth herein.

The witness Betty Fischer has lived continuously in Tarrant County since 1953. (Vol. 3, p. 1135, App. - Betty Fischer). She has been active in Tarrant County politics from 1956 to the present. (Vol. 3, p. 1135, App. - Betty Fischer). Since 1956 when she worked in the Adlai Stevenson campaign she has continuously worked as a volunteer in different political campaigns. (Vol. 3, p. 1136, App. - Betty Fischer).

She has worked in numerous legislative campaigns since 1960. (Vol. 3, pp. 1144, 1145, App. - Betty Fischer). She has managed three voter registration campaigns. (Vol. 3, p. 1145, App. - Betty Fischer). Since 1964 she has belonged to the Democratic Women's Club, and served as President during the years 1968 through 1972. (Vol. 3, p. 1145, App. Betty Fischer). She has served on the Democratic Organizing Committee (and as vice-chairman for 6 years), and is presently chairman of "Tarrant County Democrats." (Vol. 3, p. 1145, App. - Betty Fischer). She co-managed Francis Farenthold's campaign for governor in Tarrant County in 1972. (Vol. 3, p. 1145, App. - Betty Fischer).

Most of her political activity has been in precinct type organizations. (Vol. 3, p. 1145, App. - Betty Fischer). She walked door to door in the black community of Tarrant County in a campaign for the first time in 1963. (Vol. 3, p. 1192, App. - Betty Fischer). She has been in and out of the black community twice every election year since 1963. (Vol. 3, pp. 1189-1192, App. - Betty Fischer). Likewise she has been in and out of the brown and relatively poor communities twice every election year since 1963. (Vol. 3, pp. 1189-1192, App. - Betty Fischer).

She has done a substantial amount of research in the scrap book of the Democratic Woman's Club dating back to 1934 on the history of Tarrant County politics. (Vol. 3, pp. 1145, 1146, App. - Betty

Fischer).

She has done substantial research, studies and comparisons relative to the social, economic, and ethnic makeup of Texas House of Representatives District 32. (Vol. 3, p. 1139, App. - Betty Fischer).

She did research and preparation on all statistical exhibits presented by Appellees Escalante, et al in this suit. (Vol. 3, pp. 1137-1139, App. - Betty Fischer).

She did research and preparation on all of the maps presented by Appellees Escalante, et al as exhibits in the trial of this cause, including the proposed single-member district lines in Appellees Escalante exhibit 1F adopted by the trial court. (Vol. 3, pp. 1006, 1137, App. - Betty Fischer).

3. Raymond Charles Johnson

The witness Raymond Charles Johnson testified both on oral deposition and in the trial of this cause as an expert on Tarrant County politics on behalf of Appellees Escalante, et al. His qualifications and background are set forth herein.

The witness Raymond Charles Johnson is a negro who has lived in the District 32 (Tarrant County) area continuously since 1953 (20 years). (Vol. 3, pp. 1203, 1204, App. - Raymond Charles Johnson). He has been continuously employed at General Motors since 1955. (Vol. 3, p.

1204, App. - Raymond Charles Johnson). His union activities include holding the post of Trustee of the United Automobile Workers Local 276 for 4 years. (Vol. 3, p. 1205, App. - Raymond Charles Johnson). He is currently 2nd Vice President of the United Automobile Workers Local 276. (Vol. 3, p. 1205, App. - Raymond Charles Johnson).

He has been active in Tarrant County politics since 1956, his first activity in that field being in a voter registration campaign. (Vol. 3, p. 1206, App. - Raymond Charles Johnson). He has continuously been precinct chairman of precinct 90 in Tarrant County since 1960 when he was first elected. (Vol. 3, p. 1204, App. - Raymond Charles Johnson). He has been a member of the Tarrant County Executive committee since 1960. (Vol. 3, p. 1204, App. -Raymond Charles Johnson).

He has been active in The Precinct Workers Council, which is composed mostly of black precinct chairmen, workmen, and a few whites, since 1960. (Vol. 3, pp. 1209, 1210, App. - Raymond Charles Johnson). The Precinct Workers Council was organized in 1953. (Vol. 3, p. 1210, App. - Raymond Charles Johnson). He is currently President of that organization. (Vol. 3, pp. 1209, 1210, App. - Raymond Charles Johnson).

Since 1969 he has been an elected target area representative on the board of the Community Action Agency, through which Federal funds are spent and

distributed in the black and poor communities. (Vol. 3, pp. 1207, 1208, App. - Raymond Charles Johnson).

4. Dr. Charles Cottrell

Dr. Charles Cottrell has a Ph. D. in political science, at least 8 years of teaching experience and is a professor at St. Mary's University in San Antonio, Texas. (Vol. 2, p. 555, App. - Dr. Charles Cottrell). He was employed by all the plaintiffs in this case as an expert and traveled throughout the state studying the socio-economic data and election data in the counties at issue in this case. (Vol. 2, p. 556, App. - Dr. Charles Cottrell). Additional qualifications are set forth in Plaintiffs' Wright, et al, Exhibit No. 4 on p. 820 thereof, Original Record.

APPENDIX B

SUMMARY OF APPELLANT'S EVIDENCE OF RESPONSIVENESS OF TARRANT COUNTY DELEGATION

Most of the nine members of the Tarrant County Delegation to the House have occasionally voted for legislation which may be of interest to blacks.

For example, Representative Gibson Lewis was co-sponsor and voted in favor of a bi-lingual education bill in the 1973 Legislature (Vol. 1, p. 142, App. - Betty Fischer). Mr. Lewis testified that he actively supported this bill which was of interest to the browns in Tarrant County, that he attended three committee meetings on the bill, that he "worked the committee members" for passage of the bill, but that he did not assist in drafting the bill or amendments thereto or speak in favor of this bill on the house floor (Vol. 1, pp. 209-210, App. - Gibson Lewis). Mr. Lewis apparently considered such support a major effort on his behalf for the browns of Tarrant County. However, when Representative Carlos Truan of Corpus Christi, who was the primary author of this bill on bi-lingual education, testified regarding the amount of energy and effort expended by Representative Lewis on behalf of this bill, Representative Truan said that Mr. Lewis' support amounted to voting "yes" on the bill and signing it as co-author (Vol. 2, pp. 517, 531, App. - Carlos Truan). There were 77 co-sponsors of that bill in the House of Representatives

(Vol. 2, p. 517, App. - Carlos Truan). While all members of the Tarrant County delegation voted in favor of the bilingual education bill, none of them offered or originated such a bill (Vol. 1, pp. 131-132, App. - Betty Fischer).

No members of the Tarrant County delegation voted against House Bill 262 which was a bill repealing Art. 46(a), Section 8, Texas Revised Civil Statutes, the law requiring that adoption of children be by members of the same race. (Vol. 1, pp. 119-120, App. - Betty Fischer). However, this was not a burning political issue in Tarrant County, just barely making the newspapers (Vol. 1, p. 138, App. - Betty Fischer). Moreover, the constitutionality of the law forbidding the adoption of children by members of a different race had been in serious question since 1966, the year in which this Court held unconstitutional so-called miscegnation laws in the case of Loving v. Virginia, 388 U.S. 1 (1966).

Most members of the Tarrant County delegation voted in favor of House Bill 166 (1973 Legislature) which gave to an injured employee the right to select a licensed physician of his own choice. (Vol. 1, p. 120, App. - Betty Fischer). However, Betty Fischer, Appellees' political expert from Tarrant County, testified that mostly this was a burning political issue in the labor community. "I don't know that it was [a burning political issue] in the minority community at all." (Vol. 1, p. 138, App. - Betty Fischer).

The open meetings bill, House Bill 3 (1973 Legislature) was apparently supported by the Tarrant County delegation, but Tarrant County political expert, Betty Fischer, testified that this bill was not of any greater interest to the black, brown or poor community than it was to the remainder of the community (Vol. 1, pp. 117-118, App. - Betty Fischer).

The above measures are the only ones concerning which the Appellant was able to develop any significant testimony whatsoever concerning the responsiveness of the Tarrant County delegation to the particularized needs of blacks, browns, and poor persons. It is submitted that the record reproduced above does not begin to rebut the trial court's finding and Appellee's showing of unresponsiveness.